



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,410	06/16/2000	Hu Yang	2039.007400	1569
23720	7590	10/12/2004		
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			EXAMINER MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/595,410

Applicant(s)

YANG ET AL.

Examiner

Jeffrey C. Mullis

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-23, 26-44, 46-51, 54-62 and 65-78 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 8 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59 is/are allowed.
- 6) ☒ Claim(s) 1-3, 12-23, 31-44, 46-51, 60-62 and 65-71 is/are rejected.
- 7) ☒ Claim(s) 7-11, 26-30, 54-59 and 72-78 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Art Unit 1711

All remaining rejections and/or objections follow.

The structure at the top of page 9 is unclear (at least in the Office IFW copy) in that the oxygen on the left has been obliterated by a solid circle which does not appear to be a "O", i.e. oxygen. Applicants should therefore correct the structure at the top of page 9 of the instant specification.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 12-22, 31-44, 46-51, 60-62 and 65-71 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gauthier et al. (U.S. 6,143,197).

See the previous Office action at the fourth complete paragraph on page 3 et seq.

Claims 23, 51 and 62 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Matthews et al. (U.S. 6,254,804).

See the previous Office action at page 4 lines 7 et seq.

Applicants' arguments filed 7-22-04 have been fully

considered but they are not deemed to be persuasive.

Applicants' remarks regarding any rejections and/or objections not appearing above are moot since any rejections and/or objections not appearing above have been withdrawn.

With regard to Gauthier et al. '197, applicants argue the Examiner is using obvious to try reasoning. However the Examiner is not contending that it would be obvious to try the proposed modification. The denigration of this rationale is recognized. See In re Antonie, 195 USPQ 6 (CCPA 1977). The Examiner's position is rather that the invention would be obvious to do. The differences here suggest making the proposed modification. In re Clinton, 188 USPQ 365 (CCPA 1976). Gauthier teaches that diluent polymers including barrier polymers may be added. Therefore there is ample motivation to add barrier polymers to patentees' composition since Gauthier specifically says that this can be done. Since the polymers disclosed by Gauthier (as well as Matthews) are inherently oxygen scavenging, the limitations of the claims are met. In any case, Gauthier (as well as Matthews) specifically teach the production of materials for packaging intended to exclude oxygen and therefore whether or not it is implied by the references that oxygen barrier ability be inherently present in the materials of the patents, the patents do suggest oxygen barrier characteristics. Given the fact that

both patents teach materials intended to keep oxygen out, those skilled in the art would assume that the barrier polymers disclosed by Matthews and Gauthier are oxygen barrier polymers. While it may be true that Gauthier and Matthews disclose a number of potentially desirable properties for diluent polymers, the amount of picking and choosing required to pick an oxygen barrier polymer is extremely minimal.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM

Serial No. 09/595,410

-5-

Art Unit 1711

THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (571) 272-1075. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (571) 272-1078. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-0994.

J. Mullis:cdc

October 8, 2004

Jeffrey Mullis
Primary Examiner
Art Unit 1711

